90-1654

Supreme Court, U.S.
FILED
APR 5 1991
OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

RAWLEY PATTON,

Petitioner,

v.

CHARLES C. VARDELL; F.M. (MIKE) SPEARMAN;
WILLIAM T. SMITH, Judge;
JOHN DOUDOUKJIAN, Deputy;
LEROY GATSON, Deputy,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does the decision and conduct of the Fourth Circuit of the United States in Rawley Patton v. Charles C. Vardell, et al. (unpublished to our knowledge and hereinafter referred to as the "panel decision") so depart from the reality of the case as to rights to petition for redress of grievances, by the repetitive use of untrue fictions utilized by the Court as a basis of approving summary disposition of a bona fide and important civil rights action where property has been taken without due process of law and without just compensation, contrary to the Fifth Amendment of the United States Constitution?

2. Does the panel decision so far deviate from the reocrd, from the reality of the matters below and from nominal

court procedure, as to reflect a denial of equal protection of the law, as to entertaining a motion for defendants and not entertaining motions filed by plaintiff, and from orderly proceedings, as to reflect a fundamental denial of procedural due process of law, because of petitioner's inability to obtain counsel and petitioner's age-old problem of "fighting City Hall"?

3. Does the panel decision of the United States Court of Appeals for the Fourth Circuit conflict with decisions of other United States Court of Appeals in the same subject matter, as well as decide a federal question in conflict with the accepted and usual course of judicial procedures as to call for a exercise of this Court's power of supervision, and further decide an

important question of federal law which should be settled by this Court, or by a decision that so conflicts with applicable decisions of this Court as to call for this Court's intervention?

4. Is this case of such imperative public importance as to justify deviation from normal appellate practice and require immediate settlement by this Court?

PARTIES

The parties to the proceedings are set forth as follows:

The Plaintiff-Appellant below is Rawley Patton, a private citizen and property owner. He is the Petitioner.

The Defendants-Respondents below are Charles C. Vardell; F.M. (Mike) Spearman; William T. Smith, Judge; John Doudoukjian, Deputy; and Leroy Gatson, Deputy, who were respectively officers acting under color of law from whom money damages were sought by reason of the violation of civil rights.

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BRIEF FOR PETITIONER

OPINIONS BELOW

The Petitioner, hereinafter called "Patton", represents to this Court that

he is aggrieved by the panel decision reported below as Rawley Patton v. Charles C. Vardell, as set forth in the Fourth Circuit orders of January 8, 1991, January 15, 1991, December 13, 1990, and October 23, 1990. These decisions are to the best of the knowledge of the undersigned, unpublished.

These decisions affirmed decisions in favor of the Defendants, and against Petitioner, as set forth in the Magistrate's Report and Recommendation entered December 4, 1989, and the judgement of the United States District Court for the District of South Carolina, Columbia Division, of December 20, 1989, the District Court's order filed December 20, 1989, decision filed March 1, 1990, decision filed March 19, 1990, March 29, 1990.

STATEMENT OF JURISDICTION

The panel decision was rendered initially on September 28, 1990. Plaintiff-Appellant filed a pro se Petition for Rehearing and Suggestion for Hearing en banc, and the Court agreed to grant the rehearing petition and consider the appeal on the merits. Thereafter, on January 8, 1991, the Court Clerk filed an order stating that the panel considered the Petition for rehearing and was of the opinion that it should be denied and that the suggestion for rehearing en banc be denied. The Court Clerk, on January 15, 1991, determined that the judgement of the Court of

December 13, 1990, should take effect as of January 15, 1991.

This petition is filed within 90 days thereof. The jurisdiction of this

court is invoked pursuant to Section 28 USC 1254(1).

STATUTE INVOLVED

The following section of Title 42, Section 1983, is involved in this case: 42 USC Section 1983 provides in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States .. to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the person injured in an action at law, suit in equity, or other property proceeding for redress..."

STATEMENT OF CASE

A. THE DISTRICT COURT PROCEEDINGS

The Petitioner, "Patton", filed suit against South Carolina officials of

Richland County. The case grew out of outlandish "teach you a lesson" harassment, prosecutions and denial of due process. These officials were allegedly guilty of malicious and selective prosecution, illegal trespass upon private property and violation of constitutional rights of privacy, and rights under the Fourth Amendment, and the constitutional provisions providing that warrants shall not issue except upon probable cause.

The Complaint also charged that the various Richland County defendants took Patton's property without just compensation. The taking occurred by legislative fiat that denied Patton ability to use his property, where he had utilized the property for over 20 years for the repair of older cars, long before

any zoning ordinance; the zoning ordinance failed to provide for any grandfathering recognition of the taking of these vested property rights. The Complaint further charged that the defendants used harassing tactics, throwing this disabled elderly man in jail in the middle of the night, filing excessive and successive criminal charges against him, using intimidating tactics that were designed to interfere with his rights to litigate, and failure to use orderly proceedings.

Patton received a notice from Stacy S. Wilson, Deputy Clerk, that a proceeding in his case was set for December 1, 1989. Type of proceeding - Motion(s) Hearing/Status Conference. The same notice went to the U.S. Magistrate and others. Deputy Clerk Stacy S. Wilson

explained to Patton that the motions hearings/status conference was for both parties to meet an opportunity to speak, to file and hear motions, and discuss the conditions of the case. The U.S. District Court Magistrate did not obey the (Order) notice of Deputy Clerk Stacy S. Wilson. Nothing in the notice mentioned Rule 16 pretrial matters as the Magistrate's report and recommendation said. The notice did not mention Summary Judgement. See transcript. Summary Judgement was not mentioned until page 12 and 43. No one in the courtroom knew what the Magistrate was talking about till page 12.

The U.S. District Court judge ignored all of these basic issues; he confined his decision to the sole question of whether or not a county may

constitutionally pass a zoning ordinance. This was never the issue and was passed off because Patton could not afford an attorney.

Concerning the illegal prosecutorial tactics, the court ignored Patton's 4 motions with proof: Plaintiff's claim and demand to squash all defendant's affidavits because of perjury - claim and demand dismissal of summary judgement on grounds of perjury - plaintiff's claim and demand to squash 8 defected dated arrest warrants, no probable cause, and plaintiff's claim and demand to squash evidence obtained illegal. The U.S. Magistrate said, based on the materials submitted in support of the defendant's motion for summary judgement and the pleadings in this case. The only materials submitted was, memorandum of

law in support of motion for summary judgement, which is full of untrues (false) statements of the facts and defendant's affidavits which is full of hearsay and false statements. The defendants at the motions hearing/status conference, did not make any motions or pleadings. See transcript for proof. Each defendant and their attorneys signed a false affidavit under oath. They are guilty of perjury (18 U.S.C. sections 1621 and 1622) and violating rule 56-g, affidavits made in bad faith. The defendants states in their motion that Patton was tried on April 5, 1988 for the same violation. At the time of arrest and the motion for summary judgement, the case of 1988 was still in state litigation. This is double jeopardy (Fifth Amendment). Patton has an

audio/video tape of the false arrest (10 p.m.) showing the deputy's perjury in their affidavits.

Patton filed for a trial by jury, declared by the seventh amendment of the U.S. Constitution. The U.S. District Magistrate went against amendment seven and rules of civil procedure section 2072. See case file for proof of statement above. Concerning the abusive treatment of the elderly petitioner, the court ignored all issues. Concerning the taking of this long-established property rights usage, the court ignored all issues and ignored the long-established law in the favor of Patton, by way of precedent.

A review of the record shows that this hard working, disabled, veteran of World War II, who was unable to get

counsel, simply was ignored, was not heard and was mistreated throughout by the District Court and before the Court of Appeals.

Patton showed before the trial court that he had used the property for 28 years; that he had utilized the same under the corporation, R & G Painting Contractor, for the repair of older vehicles in the manner in which he was now being prosecuted, for most of that 28 years, and long before the zoning ordinance.

Patton showed that all of his neighbors signed petitions in favor of his continuing peaceful usage of the property that long pre-existed the zoning ordinance. Patton then showed that the prosecutorial tactics of selective prosecution, clear harassment, changing

of the ordinance so as to destroy any use of the property in the manner in which it had been used, all were done without due process of law and without paying any just compensation for this taking of private property. The district court ignored all of these issues, confining itself solely to the sterile question of whether or not a county may pass a constitutional ordinance -- never an issue in debate in this case, and realistically solely the product of the communication problem because the plaintiff had not been properly educated as a lawyer and could not afford a lawyer.

The only argument below made by defendants against Patton was solely based on the case of Euclid v. Ambler Realty Co., 272 US 365, 71 L.Ed. 303, 475

9 S. Ct. 114 (1926)). The case held that a city may adopt a zoning ordinance. The District Court in this case then chose to decide one issue, only, ignoring all of the other bona fide issues before the court in a proper manner. The District Court below decided only that a county could pass a constitutional zoning ordinance. This irrelevant skeletal decision and denial of any careful consideration of the matters raised by Patton was a shocking display of a high-handed manner in which some courts may use against pro se American citizens with bona fide cases. It merits consideration by this Court.

The Magistrates Report and Recommendations, filed December 1, 1989, is a clear example of abuse of civil process where a bona fide plaintiff is

unable to afford counsel. The Magistrate ignored all of the issues raised by the plaintiff. The Magistrate stated that the gist of Patton's complaint was confined to the theoretical question of use of a zoning ordinance against him.

The Magistrate ignored the issues regarding illegal taking and the unusual procedures of arresting the plaintiff in the middle of the night, have audio tape of deputy's forced enter, house showing they perjuryed in affidavits of October 6, 1989, denying him any forms of procedural protection. The Magistrate ignored how the focus on selective and repetitive prosecution of Patton solely for his 28-year legal use of his property presented a genuine issue.

The sole basis of the Magistrate's decision dated December 1, 1989, was

reliance on Euclid, supra., stating only that a zoning ordinance may involve a "taking" which does not require compensation under the Constitution -- clearly a matter irrelevant to this suit.

On December 18, 1989, Judge Simons rubber-stamped the Magistrate's decision, solely based on Euclid. The Judge failed to consider matters raised by the plaintiff, and entered an order even before the judge received or considered the Plaintiff's timely filed defense to summary judgement. Patton sought in vain to ever get the District Court to acknowledge or consider the merits of his case. Patton was unsuccessful in any respect; no reasoned decision of the matters raised by the plaintiff was ever given in the District Court.

Then followed a series of District

Court and Court of Appeals conduct through orders, that is almost a law school lesson in legal buffoonery. Thereafter, every jurist refused to consider what the case was about.

B. THE PANEL DECISIONS

The Fourth Circuit then first affirmed and dismissed the appeal on the basis that the appeal was not timely followed. This was such a ridiculous decision that when the plaintiff filed his petition for rehearing, the Fourth Circuit was forced to reverse itself, immediately.

Any further consideration of the District Court's error was then foreclosed simply because no Fourth Circuit judge cared to comment on the refusal to consider any of the issues in this case brought by this pro se

plaintiff. It became clear that the real error of law by the plaintiff was that he was not an attorney and could not afford an attorney.

Specifically, the panel only affirmed the Euclid holding. The panel refused to consider (1) that the District Court ignored under well-established federal cases, that there was a genuine taking without just compensation, (2) that the District Court overlooked the genuine issue of interference with property rights, without procedural due process of law, (3) that the District Court by-passed the facts in a genuinely raised case of abusive prosecution, selective prosecution and harassing prosecution so as to interference with someone's standing up for their rights to litigate, as well as the selective

consideration by the courts of cases based solely upon the standing and calibre of lawyers that a litigant might be able to hire and (4) that Patton was denied First Amendment protection to have his meritorious case adjudicated because he could not afford legal counsel.

ARGUMENT

A. THE PANEL DECISION SO DEPARTS FROM THE USUAL AND CUSTOMARY APPLICATION OF LAW REGARDING "JUST COMPENSATION" FOR A TAKING SUCH AS THE TAKING OF THE 28-YEAR USAGE IN THIS CASE AS TO CALL FOR THE EXERCISE FOR THIS COURT'S POWER OF SUPERVISION.

The District Court offered only anemic support for summary judgement, based solely upon the bare strawman proposition that a county may constitutionally pass a zoning ordinance without its necessarily being a taking. This was not the case presented by Patton. Defendants deceptively framed

this as the issue and it stuck.

The District Court ignored the fact of a 28-year usage of this property, uncontradicted as to the plaintiffs lawful usage in repairing old cars, is well-established. It ignored that there was a taking under federal law.

The decision in Euclid v. Amber Co., 272 US 365, 47 S. Ct. 114, 71 L.Ed. 303 (1926), was that arbitrary and unreasonable or substantially unrelated measures to public health safety and general welfare would not stand, while reasonable ordinances may stand. Euclid was not in any way dispositive of the case below.

It is clear that the debatable questions of the reasonableness, wisdom and propriety of a zoning ordinance are not for the determination of the courts

but legislative bodies. City of St. Paul v. Chicago, St. Paul, Minneapolis and Omaha Railway Co., 413 F.2d 762, 767 (8 Cir. 1969). We call this a strawman because Patton never based his case to the contrary.

Patton has the burden of proving that a zoning provision is unreasonable and arbitrary. See Exhibit A, B and C in case file, statement from Health and Environmental Control about Ordinance No. 7-1.4(6) and petition of neighbors. McMahon v. City of Dubuque Iowa, 255 F.2d 154, 159 (8 Cir. 1958). He raised that issue, but the court refused to consider that the cut-off, without grandfathering protection of a 28-year usage, was such an unlawful taking.

Another important consideration which the District Court ignored was the

issue of whether or not there is discrimination under the zoning ordinance, against Patton. Steel Hill Development, Inc. v. Town of Sanbornton, 338 F. Supp. 301 (D.N.H.1972).

The rezoning in this case, and the subsequent mistreatment of Patton, clearly established a total and absolute ruin of the economic value of the property for the plaintiff. Compare, Prentiss v. American University, 214 F.2d 282 (D.C. Cir 1954).

It is clear that the district court did not enter into any consideration of whether or not justice and fairness required that the economic injury caused to plaintiff and to plaintiff alone by public action be compensated by government rather than remain disproportionately concentrated on

plaintiff alone. Penn Central Transportation Co. v. City of New York, 98 S.Ct. 2646 (1978), See 439 U.S. 883, 99 S.C. 226.

Further, the panel refused, as noted in the Penn Central case to consider whether the particular economic restriction was rendered invalid by the government's failure to pay for any losses incurred on plaintiff alone, making the property useless to the plaintiff. The issue of what constitutes a taking for the purposes of the Fifth Amendment has been recognized as a problem of considerable difficulty. It is clearly the intent of the Fifth Amendment to bar government from forcing some people such as the plaintiff, alone, to bear public burdens which in all fairness and justice should be borne by

the public as a whole. Armstrong v. United States, 364 U.S. 124, 40, 49, 80 S.C. 1563, 1569, 4 L.Ed.2d 1554 (1960). This court has not established any set formula for determining when justice and fairness requires that economic injuries be compensated by government rather than remain disproportionately concentrated on a few. Goldblatt v. Hempstead, 369 U.S. 590, 594, 82 S. Ct. 987, 990, 8 L.Ed.2d 130 (1962).

The District Court even refused to consider the particular circumstances of the case to Patton as required by federal law. United States v. Central Eureka Mining Co., 357 U.S. 155, 168, 78 S.Ct. 1097, 1104, 2 L.Ed.2d 1228 (1958); United States v. Caltex, Inc., 344 U.S. 149, 156, 73 S.Ct. 200, 103, 97 L.Ed. 157 (1952).

The District Court refused to consider any of the talismatic standards, such as the economic impact of the newly passed zoning regulation on Patton, and the extent to which the regulation interfered with the distinct investment backed expectations of the plaintiff, as set forth in Goldblatt. The court refused to consider the character of the government's actions in this case and ignored that a taking may be more readily found by government when the interference with property can be characterized as a physical invasion by government, such as we found in this case. See, for example, United States v. Cosby, 328 U.S. 256, 66 S.Ct. 1062, 90 L.Ed. 1206 (1946).

It is clear that the motion for summary judgement in this case brought by the defendants only tested the ability to

pass a zoning ordinance and in no way attempted to set up an issue challenging plaintiff's claim that the economic value of the property was totally destroyed. The court ignored the entire doctrine set forth in Pennsylvania Coal Co. v. Mahon, 260 U.S. 293, 43 S.Ct. 158, 67 L.Ed. 322 (1922). There the court held that a state statute that substantially furthers important public policies may so frustrate investment backed expectations as to amount to a taking.

It is clear that the court below ignored the distinctions made by this Court. The courts will not require just compensation based on the mere change of ordinance where there have not been vested property rights. The courts always require just compensation where the change in ordinance takes away the

beneficial economic use of the property, established and vested, without any grandfathering. 82 Am.Jr.2d, Zoning & Planning, Section 178. See also, State v. Danner, 159 Fla. 874, 33 So.2d 45 (1947).

It is well recognized that there is a Fourteenth Amendment and Fifth Amendment violation by way of deprivation of vested property rights by any prohibition of a pre-existing nonconforming use or a taking away of a vested property right in the use of property. DesJardin v. Greenfield, 262 Wisc. 43, 53, N.W.2d 784 (1952).

We recognize that there is a clear line of cases where zoning ordinances may interfere with plaintiffs' rights and no remedy exists. Stoddard v. Western Carolina Regional Sewer Authority, 784

F.2d 1200 (4 Cir. 1986). But here, when a 28 year commercial usage is destroyed under a zoning regulation, simply does not go to whether or not automobiles are licensed, there is clearly an arbitrary and unreasonable abuse of vested property rights. See, for example, First Assembly of God v. City of Alexandria, 739 F.2d 942 (4 Cir. 1984). Such purpose clearly does not promote public health safety and welfare, but is rather an attempt to evade vested rights under a superficial appearance of zoning regulations.

A zoning regulation is an unconstitutional taking when it does not substantially advance legitimate state interest or denies an owner economic viable use of his land. Agins v. City of Tiburon, 447 U.S. 255, 261-62 (fn 8) (1980). Moore V. East Cleveland, 431

U.S. 494 (1977). Nollan v. California Coastal Commission, 107 S.Ct. 3141 (1987). First English Evangelical Lutheran Church v. Los Angeles County, 107 S.Ct. 2378 (1987).

B. THE COURTS BELOW ERRED IN REFUSING TO ALLOW FACTUAL ADJUDICATION OF THE DENIAL OF CIVIL RIGHTS BY RICHLAND COUNTY OFFICIALS IN THE WAY THE CASE WAS PROSECUTED.

The circumstances in which plaintiff was treated in this case clearly raised issues of procedural due process as well as taking. Scott v. Greenville County, 716 F.2d 1409 (4 Cir. 1983).

The only difference between the plaintiff's case and the Scott case is that Scott was a wealthy real estate developer; Patton is a disabled veteran attempting to keep his small business intact. patton is clearly entitled to process that is due, rather than midnight

jailings, successive prosecutions, and a district court action in which the issues plaintiff raised were not even considered. Logan v. Zimmerman Brush Co., 455 U.S. 422, 428, 102 S.Ct. 1148, 1153, 71 L.Ed.2d 265 (1982); Detweiller v. Virginia Dept. of Rehabilitative Services, 705 F.2d 557, 559 (4 Cir. 1983).

The court did not even consider in this case involving a poor litigant whether or not there was any reasonably grace period allowed plaintiff in the midnight jailings and successive prosecutions. Compare, Major Media of the Southeast, Inc. v. City of Raleigh, 792 F.2d 1269, 1273-74 (4 Cir. 1986), cert. den, 479 U.S. 1102 (1987).

It is interesting to note that when plaintiff brings a bona fide action

showing horrible circumstances, the Fourth Circuit ignores the case, and yet when a large developer brings a case showing not nearly as much, the Fourth Circuit is quick to hold that the matter should be adjudicated. Compare, Beacon Hill Farm Associates v. Louden County Board of Supervisors, 875 F.2d 1081 (4 Cir. 1989). In that case, while the court observed that Euclid v. Amber Realty Co. held that a land owner could attack the facial validity of a land use ordinance, it would depend upon interpretation as to what kind of an attack was made. Because plaintiff was untrained in the law and these legal niceties, the court simply dismissed, without inquiry, the nature of the conduct below.

It is clear that the plaintiff below

was not making a mere attack on the ability to pass an ordinance, but was rather attacking the illegal, confiscatory, discriminatory and barbaric use of the zoning ordinance to victimize the plaintiff. See, for example, Keystone Bituminous Coal Associates v. DeBenedictis, 480 U.S. 470, 494, 107 S.Ct. 1232, 1247, 94 L.Ed.2d 472 (1989) where the court recognized the "important distinction between a claim that the mere enactment of a statute" is unconstitutional and "a claim that the particular impact of government action on a specific piece of property" is unconstitutional. In this case, it is clear that the plaintiff brought a property claim that deserved relief and the district court and the court of appeals simply ignored this matter.

C. THE COURTS' REFUSAL TO AFFORD PATTON HIS RIGHTS TO PETITION FOR REDRESS OF GRIEVANCES IN THE ADMINISTRATION OF THE RULES BY FAILING TO CONSIDER AND ADJUDICATE THE ISSUES RAISED BY PATTON CALLS FOR THIS COURT'S SUPERVISION AND INTERVENTION.

(i) The Magistrate interfered with legal precedent and procedural due process in denying the undersigned the right to represent himself.

The concept of counsel, tracing its historical roots, finds that the very first lawyers were solely personal friends of litigants; these lawyers were brought to court so that the accused might "take counsel" with them before pleading. 1 F. Pollack & F. Maitland, The History of English Law 211 (2d Ed 1909). These first attorneys were personal agents, usually without professional training and solely appointed by litigants with royal

permission to carry on affairs and to assist the litigant. Ibid., at 212, 213.

The only time the litigants were forced to have counsel was in proceedings known as "Star Chamber Proceedings." Faretta v. California, 422 U.S. 806, 821-822 (1 J. Stephen, A History of Criminal Law of England, 341-342 [1883])(5 W. Holsworth, A History of English Law, 155-214 [1927]).

In colonial America, insistence on full self-representation by any litigant was more fervent than had ever been practiced in England. Faretta v. California, 422 U.S. 806, 810-812. The colonists brought with them an appreciation of individual self reliance and a tradition of mistrust of lawyers that manifested itself in a strong American tradition toward allowing self-

representation. D. Boorstein, The Americans: The Colonial Experience, p. 197 (1958). When the colonies were settled, the term "lawyer" was synonymous with cringing sycophant attorneys, those servants of the crown and arbitrary justices of the King's court, who were clearly bent on conviction of anyone who opposed the King's wishes, and who were known to twist the law to obtain favoritism toward the King. C. Warren, History of the American Bar, p. 7 (1911).

In the 18th Century, lower classes identified lawyers only with the very rich. Friedman, A History of the American Law, p. 23 (1970). The years of revolution and confederation saw anti-lawyers bias grow to a fevered pitch. Friedman, A History of American Law, p. 82 (1970). In this framework, our

Constitution was forged during great period of anti-lawyer sentiment and the tradition of self-representation being strongly preserved. H. Rankin, Criminal Trial Proceedings of the General Court of Colonial Virginia, pp. 67, 89 (1965).

It was in this context that the United States Supreme Court recognized that the right of a litigant to represent himself is supported by the First, Fifth, Sixth, Eighth and Fourteenth Amendment to the United States Constitution. Faretta v. California, 422 U.SA. at p. 818.

It has been specifically recognized that someone who is defending himself is entitled to call and interrogate favorable witnesses, to have an adequate opportunity to prepare for and cross-examine personally adverse witnesses, and to direct the orderly introduction of

evidence. California v. Green, 399 U.S. 149, 176.

It is noteworthy that each State of the United States affords self-representation in all criminal cases. 422 U.S. at p. 812, footnote 9. This is done by the Constitution of 36 states (footnote 10). Many of the States hold that the United States Constitution gives this right.

The United States Supreme Court has recognized this right in penal activities which, of necessity apply to an activity such as charges being brought against an attorney in this case. Adams v. United States, 317 U.S. 269, 279.

The United States Supreme Court has held: "Neither the historical conception of due process nor the vitality derived from progressive standards of justice

denies a person the right to defend himself or confess guilt. Under appropriate circumstances the Constitution requires that counsel be tendered; it does not require that under all circumstances be forced upon a defendant." Charter v. Illinois, 329 U.S. 173, 174; Moore v. Michigan, 355 U.S. 155, 161.

In the Adams case of United States Supreme Court held at 317 U.S. 279-280:

> "The right to assistance of counsel and the correlative right to dispense with a lawyer's help are not legal formalisms. They rest on considerations that go to the substance of an accused position bet for the law ... What were contrived as protections for the accused should not be turned into fetters...
>
> "To deny an accused a choice of procedure in circumstances, in which he, through a layman, is as capable of making an intelligent choice, is to

> impair the worth of the great Constitutional safeguards by treating them as empty verbalisms.
>
> "...When the administration of the criminal [penal] law ... is hedged about as it is for the Constitutional safeguards for the protection of an accused, to deny him in the exercise of his free choice the right to dispense with some of these safeguards ... is to imprison a man in his privileges and call it the Constitution."

A pro se litigant must be allowed a fair chance to present his case in his own manner. McKaskle v. Wigging, 465 U.S. 168 (1984).

The test of procedural due process is always whether the non attorney was allowed "actual control over the case he presented". The Bill of Rights gives a party "the absolute primary right to conduct [his] own defense in propria persona ..." United States v. Platner, 330 F.2d 271 (2 Cir). It is implicit in

the Fifth Amendment due process rights, as well as the Sixth Amendment right to the assistance of counsel that a litigant have the right, "personally to manage and conduct his own defense." Ibid., 330 F.2d at p. 274; United States ex rel Maldonado v. Denno, 348 F.2d 12, 15 (2 Cir); MacKenna v. Ellis, 263 F.2d 35, 41 (5 Cir); Haslam v. United States, 431 F.2d 362, 365 (9 Cir).

It is clear in this penal proceeding that the letter and spirit of the law, including the federal statute allowing one to proceed pro se, have been violated by the Magistrate. We note with interest, that defense counsel in this case would treat these Constitutional protections as a matter that can be easily waived, upon an alleged notice never received, and with time limits

never communicated to Patton and thus have justice thus frustrated. It is not wonder that there has been suspicion of counsel when such arguments can be made on behalf of the rich and powerful.

(ii) Retaliation against Patton for being unable to afford counsel because of procedural and grammatical niceties is an interference with the basic purpose of the Civil Rights Acts.

The politicalization of the American Judiciary, and even the American Bar Association, by their public invocation of political stands, and their general official support of liberal positions, has had an effect of shock on the American public.

Recently we have seen the defeat, without even a campaign, of an incumbent Justice in the State of Washington. The

confidence in the judiciary and the Bar, by all objective standards, is shown to reach new lows.

The Complaint in this case was brought under the tradition and with the protection of the purposes of the Federal Public Policy expounded upon in the Civil Rights Statutes. Section 1981 and Section 1982 of Title 42 of the United States Code have their origin in the first section of the Civil Rights Act of 1866. This legislation was passed by the same Congress that passed the Fourteenth Amendment as any student of history knows. It was reenacted in 1870, by the Act of May 31, 1870, Section 18, 16 Stat. 144.

In furtherance of the broad Congressional purpose in the Civil Rights Acts of 1866, the Acts were interpreted

to guard against any improper interference "from any source whatsoever, whether governmental or private." Jones v. Mayer Co., 392 U.S. 490, 424 (1968). Indeed, the Act had criminal sanctions for conduct such as we see in the bringing an action of a right protected under the act. Act of April 9, 1966, ch. 31, Section 2, 14 Stat. 27.

The Act was specifically passed, it was found, to deal with hostile groups such as the Ku Klux Klan, operating outside the law, as well as governmental action, and was clearly designed to aim at the type conduct alleged in the Complaint filed in this case. 392 U.S. at 436.

Given the remedial purposes of Section 1981, the Courts have held that the Statute should be liberally

construed. Long v. Ford Motor Co., 496 F.2d 500 (6 Cir 1976); Johnson v. Goodyear Tire & Rubber Co., 349 F.Supp. 3 (D.C. Tex. 1972), modified, 491 F.2d 1364 (5 Cir 1974); Cornelius v. Benevolent Protective Order of Elks, 382 F.Supp. 1182 (D.C Conn. 1974); Player v. Alabama Dept. of Pensions & Security, 400 F. Supp. 249 (D.C. Ala.); Aff'd, 536 F.2d 1385 (5 Cir. 1975); Speiss v. C. Itoh & Co., 408 F. Supp. 916 (D.C. Tex 1976); Taylor v. Flint Osteopathic Hospital, 561 F. Supp. 1152 (D.C. Mich. 1983); See also, Common, Historical Reconstruction, Reconstruction History, and the Proper Scope of Section 1981, 98 Yale L.J. 541 (1989); The Importance of Section 1981, 73 Cornell L. Rev. 596 (1988).

The bulk of cases under Section 1982 have involved real property, but cases

have also been used to enforce interference with personal and intangible rights. Section 1982 is also entitled to the remedial liberal construction in order to effectuate the remedial purposes. 3 C. Sands, Southerland Statutory Construction, Section 60.01 (4 Ed. 1972); Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 237 (1969).

The courts have favored liberal interpretation of Section 1983. Basista v. Weir, 340 F.2d 74 (3 Cir. 1965); Green v. Dumke, 480 F.2d 624, 628 fn 7 (9 Cir 1973).

To review the Civil Rights Statute is to see the tremendous the courts have taken to see that conduct such as we see in this motion for sanctions is not allowed to interfere with the ability to obtain counsel or to discourage counsel

from participating in civil rights actions. It was for this very reason that the Congress encouraged counsel to participate by the passage of generous fee provisions. However, even this has not been successful in enlisting sufficient counsel to be available to the vast numbers of the public who wish to obtain counsel and are unable to do so in protecting their civil rights.

The facts of the case at Bar are a glaring testimony to this.

(iii) The Motion for Summary Judgement on this record ignores the historical and statutory background of the Civil Rights Statutes.

The Civil Rights Statutes were intended to be used by a vast array of citizens and a vast array of circumstances. The United States

Supreme Court recently stated in Wilson v. Garcia, 105 S. Ct. 1938, 1946 (1985):

> "A catalog of...Constitutional claims that have been alleged Section 1983 would encompass numerous and diverse topics and subtopics: Discrimination in public employment on the basis of race or the exercise of First Amendment rights, discharge or demotion without procedural due process, mistreatment of school children, deliberate interference with the medical needs of prison inmates, the seizure of chattels without any advance notice or sufficiency to be heard--to identify only a few."

And the entire plethora of these and many other well-established rights were alleged and documented in the case at bar.

The courts have noted that there has been a tremendous increase in Section 1983 cases, going from 270 in 1961 to over 30,000 in 1981. Patsy v. Board of Regents, 457 U.S. 496, 533 fn 20 (1982).

A large measure of this was the Congressional mandate in 1966 that brought about the Civil Rights Attorneys Fees Award Act of 1976, 42 U.S.C. Section 1988. In order to understand the significance of this act, it is necessary to review the conduct of the 42nd Congress in 1871 and the campaign of violence and deception, fomented by the Ku Klux Klan, which denied decent citizens their civil and political rights. Wilson v. Garcia, 105 S.Ct. 1938, 1947 (1985).

The approach of the Congress was considered part of the crucial ingredients in the basic alteration in the federal system accomplished during the Reconstruction Era. Patsy v. Board of Regents, 457 U.S. at 502-503. The very purpose of Section 1983 was to

impose the federal courts between those in power or the mob rule to become guardians of the peoples' federal rights and to protect citizens from unconstitutional conduct. Mitchum v. Foster, 407 U.S. 225, 242 (1972), quoting from ex-parte Virginia, 100 U.S. 339, 346 (1879).

All that need be all in order to satisfy the requirements of pleading of civil rights complaint are (1) the plaintiff must allege that some person has deprived them of a federal right and (2) he must allege that the person who has deprived him of that right acted under color of state or territorial law." Gomez v. Toledo, 446 U.S. 635, 6408 (1980); Baker v. McCollan, 443 U.S. 137, 140 (1979); Flagg Bros. v. Brooks, 436 U.S. 149, 155 (1978); Adickes v. S. H.

Kress & Co., 398 U.S. 144, 150 (1970). And the requirements for pleading under Section 1981 and 1982 were even simpler.

Further, the rule of standing and the requirement that a party only assert the rights of his that have been violated is relaxed in federal civil rights cases where there is a special relationship between those asserting the rights and those injured. See, for example,, Carry v. Population Serv. Int'l, 431 U.S. 678 (1977); Craig v. Boren, 429 U.S. 190 (1976); Pierce v. Society of Sisters, 268 U.S. 510 (1925). And, especially, where there were pragmatic obstacles, such as the denial of counsel in this case, to bring about enforcement of rights. Secretary v. Joseph H. Munson Co., 104 S.Ct. 2839, 2847 (1984), Singlet V. Wulff, 428 U.S. 106 (1976). See Page,

Petition for Writ of Certiorari - 22, supra., quoting from Village of Schaumburg v. Citizens for Better Environment, 444 U.S. 620, 634 (1980); Broaderick v. Oklahoma, 413 U.S. 601 (1973).

The courts relaxed the rule in the practical expression of protection of rights on the "assumption ...[that failure] may cause others not before the court to refrain from constitutionally protected speech or expression." This is especially true of the right to petition for redress of grievances under the same First Amendment.

It is noted that states may not even apply preconditions to the right to bring the protected and hallowed 1983 actions. Rosa v. Cantrel, 705 F.2d 1208, 1221 (10 Cir. 1982); Brandon v. Board of

Education, 635 F.2d 971, 973 (2 Cir 1980); Willis v. Reddin, 418 F.2d 702 (9 Cir 1969).

It is clear that the courts, in the interest of encouraging attorneys to assist in civil rights actions have provided as the only remedy a diminution of fee awarded for supposed poor quality of work. It is clear, on the basis of the allegations made against this attorney as well as clear public policy that these motions are improper and further that procedures should have been molded and allowed to be molded by pro se attorney.

(iv) The First Amendment guarantee against chilling and interference of the right to petition for redress of grievances, as well as the standards of Federal Rule (Federal Rules of Civil

Procedure) require this Court's intervention in this case.

The Defendants filing any motion for dismissal or summary judgement have an affirmative duty to investigate the facts and to research the law. Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d 1531, 1536 (9th Cir. 1986); Albright v. Upjohn Co., 788 F.2d 1217 (6th Cir. 1986); Southern Leasing Partners, Ltd. v. McMullan, 801 F.2d 783, 788 (5th Cir. 1986), and then proceed only in good faith and not for improper purposes. In re Itel Securities Litigation, 791 F.2d 672 (9th Cir. 1986), cert den, 107 S.Ct. 880 (1987). Any conduct, harassing (such as deciding the case before Patton was even allowed to answer) or attempting to intimidate (such as the use of legal gobblygook language)

is a violation of the court-imposed standards. Eske v. Hynes, 601 F. Supp. 142, 144 (E.D. Wisc. 1985).

The Court must examine the conduct of each of the attorneys, and the Magistrate and Court of Appeals panel, and determine if there has been a violation of the standards, or procedures that are frivolous, unreasonable or without factual foundation. Zaldivar v. City of Los Angeles, 780 F.2d 823, 831 (9th Cir. 1986); King v. Idaho Funeral Service Assn., 862 F.2d 744, 746-47 (9th Cir. 1988); Hudson v. Moore Business Forms, Inc., 836 F2d 1156, 1162-63 (9th Cir. 1987); Eastway Construction Corp. v. City of New York, 762 F.2d 243, 254 (2nd Cir. 1985).

In the case, the legal establishment has operated to decide and dismiss a case

never brought by Patton. They did so with neatness, legal nicety and sophistication. But they did so dishonestly. This is why confidence in the courts is eroded. Scores of citizens, like Patton, see that the courts are serving money and power and not justice. This Court is called to intervene and correct this.

D. CONCLUSION

Patton asks this court to take control of this case and assist justice to America by protecting against the sophisticated the subtle destruction of the Civil Rights Acts, procedural due process and the First Amendment right to petition for redress of grievances in the day-to-day administration of the courts. We ask this Court to stop abuse that allows the courts only to favor the rich

and powerful and to abusively use laws designed to protect ordinary citizens, where these ordinary citizens fighting for their very right to exist cannot afford high-priced legal counsel. The failure of this Court to speak out on this issue has led to a dramatic deterioration of confidence in the judiciary and disrespect for the courts. This case presents a dramatic example of judicial violence against the Civil Rights Act and a classic example of tolerance of fundamental denial of procedural due process, as well as a shocking commentary on what happens when a litigant cannot afford high-priced counsel, while the other side does use such high-priced counsel, and the result is a decision on and issue in no way related to the poor litigant's case.

In this case Rawley Patton maintained a business at his premises four acres for 28 years. Business Incorporated 1965. "County Zoning 7-1-4(6) started 1977 automotive vehicles or trailers of any kind or type without current license plates and current inspection stickers, if applicable, shall not be parked on any residentially zoned property other than in completely enclosed buildings."

R & G Paint Contractor, inc. Rt. 3 Box 174, Columbia, S.C. 29206. Later became 114 Horseshoe Circle, 29223.

"This is to certify that the above identified vendor, making retail sales of tangible personal property for storage, use or other consumption within the State of South Carolina has registered with the South Carolina Tax Commission as required

by the provisions of Section 65-1429, Code of Laws, 1962" quoted from year end tax receipt. The R in R & G stands for Rawley, Patton owner still current. All of his neighbors signed petitions favoring his right to continue this business. The County of Richland not only attempted to legislate away his property rights, vested for 28 years, but did so without any just compensation, grandfathering, or threshold decisional process assuring against arbitrary and capricious legislative conduct contrary to the Fifth and Fourteenth Amendments. Following this, the County of Richland sought to enforce their questionable legislation, not by some fair hearing process or reasonable proceeding, but by Gestapo-like midnight raids on Patton, throwing him in jail with false

affidavits and three affidavits for arrest warrants dated 258 day 258, 258 and one dated 285 day of August, 1989 and 2 warrants no effective dates, filing of successive (identical) and multiple (8) criminal complaints and trampling upon any opportunity for him to defend himself. Patton had to put his property up for a $3,200.00 bond to get out of jail after 22 hours.

Upon Patton's attempting to approach the courts, he was met with a judicial bureaucracy using a foreign language of legal gobblygook. He was presented with a summary judgement having nothing to do with his complaints, merely raising the question that a municipal body may pass a zoning ordinance. The court dismissed his case even before he was allowed to respond within time, holding nicely that

a municipal body could pass a zoning ordinance, but never one considering the array of transgressions against federal law and civil rights clearly apparent in the case. Solely because Patton was unable to afford an attorney, none of the issues were ever examined.

Richland County South Carolina is in a high state of corrupt government, I have proof by way of sworn affidavits and court transcripts and my personal experience.

The attorney for defendants (Vinton D. Lide, in his memorandum of law stated that, the error in my interpretation of the law was clearly pointed out to me in the circuit court order of Judge Sidney T. Floyd. Floyd's order was drawn up by the county attorney William F. Able which is full of untrues (perjury). Able state

that magistrate Smith, where the case was appeal from, took judicial notice of S.C. and U.S. Supreme Court decisions such as, Village of Euclid v. Ambler 272 U.S. 365, (1926). Attorney Able or Judge Floyd was not at magistrate Smith's court, and there is no case mention in the transcript. County attorney Able drew up the order and Judge Floyd signed it, a false affidavit a crime. There is other untrues in the order I have the proof. Judge Floyd told the stenographer not to record the hearing. I told the judge that I wanted a transcript, of the hearing Judge Floyd said I did not need one. He told the stenographer again and she did not record. I don't have enough pages to put all the proof in this petition, but I do have the proof of the guilt of the following conspirators, all

these is zone related conspiracy. Judge Ernest Kinard illegal court procedure, let county attorney Able a defendant in a default case (Rule 55) start the case, file motison at start of hearing should have file 10 days before. Able perjury his self in court Judge Kinard let him get by with it and rule for him. Julius H. Beggett did the same. Magistrate William T. Smith the same. In magistrate Smith's court April 5, 1989, Inv. Cornise investigator with Richland County Sheriff's Department under sworn oath that Patton was arrested under warrant B954293 Jan. 27, 1988 before Patton's place was searched. Search Warrant dated January 28, 1988 show how discrimination Richland County is see state newspaper, Columbia, S.C., April 2 & 3, 1991. Former USC President James Holderman non-

resident. Charges stem from an investigation into $25,000.00 in payments he received from the McNair Law Firm of Columbia and possible state income tax evasion case. Judge J. Ernest Kinard let Holderman free on a $10,000.00 personal recognizance bond and he did not even go to the jail. Much less in jail. Big money power. Patton had to put up his property (land) .$3,200.00 bond and spent 22 hours in jail. County had to check property deed. Magistrate told Patton he could not get out on a P.R. bond and he could expect 8 to 10 arrest warrant a week till he learned better, speaking about his antique model A Fords. Patton try to explain that he was under the grandfather clause, magistrate would not listen.

Patton appealed to the Court of

Appeals. That court immediately threw the case out as not timely filed, totally in error and with a degree of lack of attention that would embarrass a first year law student. Thereafter, the Court of Appeals refused to even discuss or acknowledge the fact that the case was not about an issue of whether or not a municipal body could pass a zoning ordinance, but about numerous other issues never discussed by the court.

It is clear that our courts, more than 50 years after the sweeping reforms of the new Federal Rules are being allowed to disintegrate into a caste-like system where the most powerful and sophisticated lawyers, not justice, prevail. This Court has an opportunity in this case to intervene and address this issue in the important area of the

taking of a vested business interest in property without any protection, compensation or legal redress, save by the rich and powerful.

For the foregoing reasons, Patton contends that he had been unjustly denied his day in court. This resulted because the panel sharply deviated from common law (Gods Law) and constitutional law, and what's right and justice. Patton prays that his petition for certiorari be granted.

DATED this 4th day of April. 1991.

Respectfully Submitted,

Rawley Patton

RAWLEY PATTON, Pro se